

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 15956
[Redacted]	)	
Petitioners.	)	DECISION
	)	
	)	

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On September 14, 2001, the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (the petitioners), proposing additional income tax and interest for the taxable years 1998 and 1999 in the total amount of \$6,190. The petitioners filed a timely protest and petition for redetermination. A hearing was held on January 3, 2002. The Tax Commission, having reviewed the file, hereby issues its decision.

The sole issue to be decided is the proper application of the petitioners' 1997 Idaho net operating loss. The petitioners carried the loss forward applying part of the 1997 loss in 1998 and the rest of the 1997 loss in 1999. The auditor disallowed the deductions in 1998 and 1999 relating to the carryforward of the 1997 Idaho net operating loss. Additionally, the auditor, in the explanation page attached to the audit report, informed the petitioners that the 1997 loss was required to be carried back and applied to prior tax years and that, in accordance with Idaho Code [Redacted]63-3072, the timeframe in which to claim a refund (from the application of the loss carrybacks) had expired.

Law and Analysis

The starting point for computing Idaho taxable income is federal taxable income as defined in the Internal Revenue Code. Idaho Code § 63-3002.<sup>1</sup> In computing Idaho taxable

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<sup>1</sup> Unless otherwise indicated, references to Idaho Code sections refer to the Idaho Code section in effect at the end of 1997.

income, any federal net operating loss is added to federal taxable income. Idaho Code § 63-3022(c). Any Idaho net operating loss is then subtracted. Idaho Code § 63-3022(d).

Idaho Code § 63-3022(d)(1) stated, in pertinent part:

(d) (1) A net operating loss for any taxable year commencing on and after January 1, 1990, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the three (3) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the three (3) preceding years may be subtracted in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the three (3) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made.

In the petitioners' petition for redetermination dated September 25, 2001, the petitioners claim that:

The State of Idaho uses the federal return as its basis for the preparation of the Idaho individual return. It also requires the attachment of a complete copy of the federal return. Part of the 1997 federal return is the federal election to relinquish the net operating loss carryback period. According to Idaho code section 63-3022(c), the election shall be made as under section 172(b)(3) of the Internal Revenue code. Our attempt to comply with the Idaho statutes [sic] was made by attaching the federal election to the return. A separate election attached to the return would be redundant. This was agreed to by the Idaho State Tax Commission when they changed the requirements in the March 2001, effective for returns with taxable years after January 1, 2001.

Basically, it is the petitioners' contention that the federal election to forego the federal carryback period attached to the federal return satisfies the requirements under Idaho law to forego the Idaho carryback period. The Tax Commission respectfully disagrees. Idaho Code [Redacted]63-3022(d)(1) clearly states that "An election under this subsection **must** be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the

year in which it is made.” (Emphasis added.) Idaho Income Tax Administrative Rule 201 (hereafter “Rule 201”) sets forth the “manner” in which the Idaho election was to have been made.<sup>2</sup>

Rule 201.d stated:

d. Timing and Method of Electing to Forego Carryback. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. The election referred to in this subsection is made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information:

- i. The name, address, and taxpayer's social security number or employer identification number;
- ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(d)(1), Idaho Code, to forego the carryback provision; and
- iii. The amount of the net operating loss.

The statement attached to the petitioners’ 1997 federal return, which in turn was attached to the petitioners’ 1997 Idaho income tax return read as follows:

1997	FEDERAL STATEMENTS	Page 1
[Redacted]	[REDACTED]	[Redacted]
STATEMENT 1		
ELECTION TO RELINQUISH NET OPERATING LOSS CARRYBACK PERIOD		
THE ABOVE NAMED TAXPAYER INCURRED A NET OPERATING LOSS IN THE TAXABLE YEAR ENDING DECEMBER 31, 1997 AND IS ENTITLED TO A THREE-YEAR CARRYBACK PERIOD WITH RESPECT TO THAT LOSS UNDER CODE SECTION 172(B)(1) OF THE INTERNAL REVENUE CODE.		
PURSUANT TO CODE SECTION 172(B)(3), THE TAXPAYER HEREBY ELECTS TO RELINQUISH THE ENTIRE CARRYBACK PERIOD WITH RESPECT TO THE NET OPERATING LOSS INCURRED IN THE TAXABLE YEAR ENDING DECEMBER 31, 1997.		

<sup>2</sup> Unless otherwise indicated, a reference to an Idaho Rule refers to the Idaho Rule in effect at the end of 1997.

Clearly, the statement in the return filed by the petitioners is an election to forego the federal, not the state, net operating loss carryback period. Furthermore, this election to forego the federal carryback period does not comply with all of the requirements found in Rule 201 set forth above.

The petitioners argue, “[a] separate election attached to the return would be redundant.” Again, the Tax Commission respectfully disagrees. There are numerous reasons why one may want one’s federal net operating loss applied in a different manner than their state net operating loss due to differences in the computation of taxable income for federal and state purposes. For federal purposes, social security may be taxed while it is not taxed by the State of Idaho. The State of Idaho has a capital gains deduction, while none is available for federal purposes. Idaho has an investment credit which may offset tax for some years making it desirable to apply the net operating losses to other years.

Idaho Code Section 63-3022(d)(1) states “[a]n election under this subsection must be in the manner prescribed in the rules of the state tax commission.” (Emphasis added.) The statute clearly gives the Tax Commission the authority to prescribe rules governing the manner in which the election is made. In 2000, the Tax Commission proposed changes to Rule 201 expanding the manner in which the election was to be made to include the federal election in certain circumstances. However, Rule 201 (as it currently reads) makes it clear that the acceptance of the federal election only applies to net operating losses incurred in taxable years beginning on or after January 1, 2001. Since the Idaho net operating loss at issue is for calendar year 1997, the changes made to Rule 201 are not applicable to the case at-hand.

### Conclusion

Since the application of the statutory provision is mandatory and not discretionary, the Commission finds that the election filed by the petitioners does not fulfill the requirements under

Idaho law to forego the Idaho net operating loss carryback provision of Idaho Code [Redacted]63-3022.<sup>3</sup>

WHEREFORE, the Notice of Deficiency Determination dated September 14, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest (calculated through May 15, 2002):

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$2,159	\$510	\$2,669
1999	\$3,184	\$519	\$3,703
TOTAL DUE			<u><u>\$6,372</u></u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' rights to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2002.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

<sup>3</sup>. See docket number 14436 (issued April 11, 2000) and docket number 14387 (issued November 27, 2000) both of which can be found at [http://www.state.id.us/tax/decisions\\_indiv00.htm](http://www.state.id.us/tax/decisions_indiv00.htm) for similar Tax Commission findings.

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]  
[REDACTED]

Receipt No. [Redacted]

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ADMINISTRATIVE ASSISTANT 1